

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

his toes due to factors of his federal employment. He stopped work on September 22, 2010. Appellant's supervisor related that he had worked limited duty since an August 19, 2004 injury. On November 30, 2010 the employing establishment controverted the claim. It noted that appellant had a prior work injury on August 19, 2004, accepted by OWCP for lumbar sprain.

On December 3, 2010 OWCP requested additional factual and medical information, including a detailed medical report explaining how work activities caused or aggravated a diagnosed condition. In a December 11, 2010 response, appellant attributed his condition to pushing heavy equipment, lifting trays that weighed up to 60 pounds, overhead lifting, twisting, bending and squatting. He also submitted disability certificates and duty status reports from 2000 to 2007, the results of diagnostic testing and a 2005 functional capacity evaluation. A magnetic resonance imaging (MRI) scan study of the lumbar spine dated March 10, 2010 showed multilevel disc bulges and L3-4 to L5-S1, an annular tear at L4-5 and possible mild facet arthropathy and foraminal stenosis.

In a duty status report dated September 9, 2010, Dr. Shevin D. Pollydore, a Board-certified physiatrist, diagnosed discogenic low back and lumbar facet pain. He checked "yes" that the history of injury provided corresponded to that shown on the form of appellant claiming a herniated bulging disc in the lower back. Dr. Pollydore found that appellant required work restrictions.

In a treatment note dated October 10, 2010, Dr. Pollydore diagnosed lumbar facet pain, discogenic low back pain with multiple disc bulges and an annular tear at L4-5 as seen on MRI scan study. He found that appellant could work limited-duty employment. In an accompanying duty status report, Dr. Pollydore provided a history of appellant being "injured on the job." He diagnosed discogenic low back and lumbar facet pain and provided work restrictions.

On December 22, 2010 appellant filed claims for compensation for time lost beginning September 25, 2010 because there was no work available for him under the National Reassessment Program (NRP).

By decision dated January 5, 2011, OWCP denied appellant's claim that he sustained a back condition causally related to factors of his federal employment. It found that he had established the occurrence of the claimed work factors but did not submit medical evidence showing that he sustained any condition as a result of the accepted employment factors.

On appeal appellant argued that the employing establishment instructed him to file an occupational disease claim after it sent him home without work due to the NRP. He asked his physician to provide a narrative report but that OWCP did not receive it. Appellant requested assistance obtaining copies of medical evidence.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

States” within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>9</sup> must be one of reasonable medical certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### ANALYSIS

Appellant attributed his back condition to heavy lifting, bending, twisting and squatting. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

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<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>8</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

Appellant submitted disability slips and form reports dated 2000 to 2007, a 2005 functional capacity evaluation and diagnostic test results. This evidence, however, does not provide any opinion from a physician addressing causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>12</sup>

In a duty status report dated September 9, 2010, Dr. Pollydore diagnosed discogenic low back and lumbar facet pain and checked "yes" that the history of injury provided corresponded to that claimed by appellant. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>13</sup> Additionally, the form does not set forth the work factors identified by appellant as causing his condition.

On October 10, 2010 Dr. Pollydore diagnosed discogenic and lumbar facet low back pain with multiple disc bulges and an annular tear at L4-5 confirmed by MRI scan study. In a duty status report of the same date, he provided a history of appellant being "injured on the job." Dr. Pollydore provided work restrictions. He did not address the diagnosed conditions or relate the diagnostic findings to factors of appellant's federal employment or provide rationale for his opinion. The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, supported by affirmative evidence and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established work factors.<sup>14</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.<sup>15</sup> He must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>16</sup> Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

On appeal appellant asserts that he asked his physician to submit medical evidence supporting his claim. He has the burden of proof to establish a causal relationship between his

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<sup>12</sup> See *A.F.*, 59 ECAB 714 (2008); *K.W.*, 59 ECAB 271 (2007).

<sup>13</sup> *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

<sup>14</sup> See *Robert Broome*, 55 ECAB 339 (2004).

<sup>15</sup> See *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>16</sup> See *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, *supra* note 14.

condition and the identified work factors,<sup>17</sup> which the Board finds that he has failed to do. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a back condition causally related to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> See *B.B.*, 59 ECAB 234 (2007).

<sup>18</sup> Appellant submitted new medical evidence subsequent to OWCP's decision. The Board has no jurisdiction to review new evidence on appeal; see 20 C.F.R. § 501.2(c)(1).